

STATE OF FLORIDA

Commissioners:
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Public Service Commission

August 6, 1997

BY AIRBORNE EXPRESS DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW, Room 222
Washington, DC 20554

Re: CC Docket No. 96-45 - Federal-State Joint Board on Universal Service

Dear Mr. Caton:

The Florida Public Service Commission has decided to withdraw certain issues from its petition for reconsideration, and thus is filing an amended petition. Please replace the July 16 petition with this FPSC Amended Petition for Reconsideration. Enclosed are an original plus 17 copies. Please date-stamp one copy and return in the enclosed self-addressed stamped envelope.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia Miller".

Cynthia Miller
Senior Attorney

CBM:jmb
Enclosure
cc: International Transcription Service

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C. 20554

In the Matter of:)

Federal-State Joint Board)
on Universal Service.)
_____)

CC DOCKET 96-45

MAILED
MAY 17 1997
FBI - WASH DC

FLORIDA PUBLIC SERVICE COMMISSION'S
AMENDED PETITION FOR CLARIFICATION AND RECONSIDERATION

The Florida Public Service Commission (FPSC), by this amended petition hereby seeks clarification of one portion and reconsideration of one portion of the Federal Communications Commission (FCC) Order, that was adopted May 8, 1997.¹ This petition is filed pursuant to FCC Rule 1.429 (47 CFR 1.429).

(1) Clarification is needed on the language in the Order relating to discounts on the schools and libraries

The legal framework set forth on interstate/intrastate discounts on the schools and libraries fund could create jurisdictional problems for states in the future. The wording of the legal framework on mandating what states must do on their intrastate discounts looks somewhat questionable, in that the Act gives states authority over intrastate discounts. (Section 254(h)(1)(B)). We take some comfort, however, that the Order makes requirements on states only as a condition of receiving Federal support. Clearly, the FCC has no blanket authority as to how states may set their intrastate discount. In Section X on

¹ The FPSC is withdrawing some of the issues raised in its July 16, 1997, Petition for Reconsideration.

Schools and Libraries, the FCC requires states to establish intrastate discounts at least equal to the discounts on interstate service as a condition of federal universal support for schools and libraries in that state. The FCC acknowledges that the Act authorizes states to determine the level of discounts available to schools and libraries with respect to intrastate services, but concludes that nothing prohibits the FCC from offering to fund intrastate discounts or conditioning the Federal funding "necessary" to achieve certain goals. We simply ask that the FCC clarify that it is only conditioning the funding of the intrastate portion on the adoption of the Federal matrix.

Thus, we urge that ¶ 550 be re-worded so that the sentence reads:

We adopt rules providing federal funding for intrastate discounts, as well. However, the federal funding for those intrastate discounts is conditioned on the state's adoption of intrastate discounts at least equal to the discounts on interstate services.

(2) **The Treatment of Income Tax Expense for High Cost Fund should be reconsidered**

We believe that the FPSC proposal on income tax expense treatment may have been overlooked, and that we should seek reconsideration of this item. On November 7, 1994, the Florida Public Service Commission (FPSC) filed comments with the FCC in response to a Notice of Inquiry (NOI) issued on August 30, 1994, in CC Docket No. 80-286, to develop information concerning the manner in which the FCC's Part 36 jurisdictional separations rules are used to provide interstate assistance to local exchange

companies. Although the NOI did not raise any concerns about income tax expense, we provided comments and our recommended solution on what we believe to be a problem with income tax expense.

On September 8, 1995, the FPSC filed comments in response to a Notice of Proposed Rulemaking (NOPR) and NOI issued on July 13, 1995, in CC Docket No. 80-286, to develop information concerning the manner in which the FCC's Part 36 jurisdictional separations rules are used to provide interstate assistance to local exchange companies. The NOPR and NOI did not discuss income tax expense. However, we provided comments and our recommended solution on what we believe to be a problem with income tax expense.

On March 27, 1997, an ex parte letter was filed with the FCC from Julia Johnson, Chairman FPSC, to Reed Hundt, Chairman FCC. Again, the issue concerning the amount of income tax expense which is included in the calculation of loop costs for high cost support was raised and our recommended solution was stated.


The current method of including a portion of book income taxes for calculating high cost support is not appropriate. A carrier which is earning an excessive rate of return will have a high level of income tax expense on its books. Under current rules, that high level of income tax expense is included in a carrier's loop costs and results in an even higher level of costs and high cost support for the carrier. Providing even more high cost support to a carrier which already has excessive earnings is contrary to the goals of the Universal Service Fund. Income

taxes related to the return component on investment should be calculated based on the loop investment and the authorized rate of return for each carrier as is done in the calculation of DEM weighting and Long Term Support amounts. This will allow an amount of income tax expense which is appropriate for the amount of investment and rate of return allowed.

Conclusion

Thus, we are seeking clarification of the interstate/ intrastate jurisdictional discussion in the schools/libraries section; and reconsideration of the treatment of income tax expense for the high cost fund.

Respectfully submitted,



Cynthia B. Miller
Senior Attorney

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C. 20554


In the Matter of:

Federal-State Joint Board
on Universal Service.

CC DOCKET 96-45

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 12 day of August, 1997, a true and correct copy of the foregoing Florida Public Service Commission's Amended Petition for Clarification and Reconsideration will be furnished this week to parties on the mailing list previously used in this docket.


Cynthia B. Miller
Senior Attorney